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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,987	07/28/2003	Darrel Dean Drinan		7157

7590 07/27/2006

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Suite 152
11772 Sorrento Valley Road
San Diego, CA 92121

EXAMINER	
ROGERS, KRISTIN D	

ART UNIT	PAPER NUMBER
3736	

DATE MAILED: 07/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/628,987	DRINAN ET AL.	
	Examiner	Art Unit	
	Kristin D. Rogers	3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *15 June 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☐ Claim(s) *1-12* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-12* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group I and Species II claims 1-12 in the reply filed on June 9, 2006 is acknowledged.

Specification

2. The abstract of the disclosure is objected to because of minor informalities: the word "an" should be added before "apparatus" in line 3 of the abstract. Correction is required. See MPEP § 608.01(b).

3. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Information Disclosure Statement

4. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Claim Rejections - 35 USC § 102

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

5. Claims 1-5,8,11 rejected under 35 U.S.C. 102(a) as being anticipated by Brooks (6343140). In regard to claims 1 and 8, Brooks shows a method and apparatus for identifying a user by bioelectrical data comprising the method of bioelectric impedance identification comprised of the steps of: a. introducing, for the purpose of creating a first reference template data set, one or more electrical signals into a subject's body via a plurality of electrically conductive structures at one or more locations on the body 14 and 16; b. measuring by a plurality of electrically conductive structures the electrical impedance resultant from said first set of introduced electrical signals (Figure 3); c. storing said first set of measured impedance resultant from said first set electrical signals introduced for the purpose of reference template creation (column 12 line 65 to column 13 line 6); d. introducing, measuring and storing at least one subsequent additional set of electrical signals for the purpose of modification of the reference template; e. adjusting said first reference template bioelectric impedance values by impedance values forthcoming from one or more said additional sets of measurements; f. introducing for the purpose of query one or more electrical signals via a plurality of electrodes into a subject's body at one or more locations; g. measuring by a plurality of electrically conductive elements the electrical signals introduced for the purpose of query; h. comparing for the purpose of assessment one or more measured bioelectric impedance values resultant from one or more electrical signals introduced for the purpose of query to one or more adjusted reference template bioelectric impedance

values (column 12 lines 65-67). i. presenting the outcome of the assessment (abstract, column 3 lines 15-34, column 4 lines 59-62, column 13 lines 1-3, Figure 1,3,). In regard to claim 2, reference measurements are taken on a periodic basis (column 20 lines 62-67). In regard to claim 3, the device and method of Brooks is designed to be utilized by multiple users for identification purposes. It is obvious that the periodic basis of reference measurements being obtained is more than onece a day, daily, weekly, or monthy, since mulptiple users can utilize the device within a given period (abstract). In regard to claim 4, one or more of said additional reference measurements are comprised of bioelectric impedance data sets resultant from query measurements (abstract, column 12 lines 65-67). In regard to claims 5 and 11, the electrical signal introduced is from between the frequency of 100 Hz to 1 MHz (column 9 lines 39-52). The Examiner notes that Setlak et al. (6067368) discloses the frequency ranged claimed by Applicant in column 5 lines 34-40).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 6-7, 9-10, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brooks in view of Setlak et al. (6067368). Brooks shows a method of bioelectric impedance identification as described above including introducing a frequency signal, but lacks disclosure of a frequency in the range of 5KHz to 250 KHz and an additional measuring means of identification. In regard to claims 6 and 12, Setlak et al. teaches a method of bioelectrical impedance recognition comprising introducing an electrical signal in the range of 1KHz to 1MHz (column 5, lines 34-40). In regard to claims 7 and 9-10, Setlak teaches a method step of measuring one or more additional means of identification and utilizing that identification in assessment comprising a fingerprint 30 (column 5 lines 4-25). Therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to modify

Brooks with a signal frequency in the range of 5KHz to 250 KHz and an additional measuring means of identification as taught by Setlak et al. since such modification would provide a means to measure impedance values and a further means of user identification.

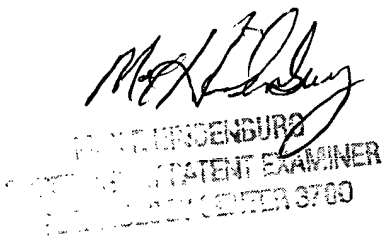
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristin D. Rogers whose telephone number is 571.272.7293. The examiner can normally be reached on Monday through Friday 8:00am - 4:30pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571.272.4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KDR



Notice of References Cited	Application/Control No. 10/628,987	Applicant(s)/Patent Under Reexamination DRINAN ET AL.	
	Examiner Kristin D. Rogers	Art Unit 3736	Page 1 of 2

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
*	A	US-5,325,442 A	06-1994	Knapp, Alan G.	382/124
*	B	US-6,067,368 A	05-2000	Setlak et al.	382/124
*	C	US-6,292,690 B1	09-2001	Petrucelli et al.	600/547
*	D	US-6,343,140 B1	01-2002	Brooks, Juliana H. J.	382/115
*	E	US-6,336,045 B1	01-2002	Brooks, Juliana H. J.	600/547
*	F	US-2002/0179338 A1	12-2002	Tanida et al.	177/25.13
*	G	US-6,532,384 B1	03-2003	Fukuda, Yoshinori	600/547
*	H	US-2003/0135097 A1	07-2003	Wiederhold et al.	600/301
*	I	US-6,618,616 B2	09-2003	Iijima et al.	600/547
*	J	US-6,621,013 B2	09-2003	Tanida et al.	177/4
*	K	US-6,647,289 B2	11-2003	Prutchi, David	600/547
*	L	US-2004/0019292 A1	01-2004	Drinan et al.	600/547
*	M	US-6,898,299 B1	05-2005	Brooks, Juliana H. J.	382/115

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	N					
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	P					
	Q					
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Notice of References Cited	Application/Control No. 10/628,987	Applicant(s)/Patent Under Reexamination DRINAN ET AL.	
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U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
*	A	US-3,781,855 A	12-1973	Killen, Donald E.	382/126
*	B	US-5,793,881 A	08-1998	Stiver et al.	382/115
*	C	US-2001/0020138 A1	09-2001	Ishigooka et al.	600/547
*	D	US-2002/0002342 A1	01-2002	Iijima et al.	600/547
*	E	US-2002/0032383 A1	03-2002	Weil et al.	600/484
*	F	US-6,537,228 B1	03-2003	Lambert, Scott	600/506
*	G	US-6,665,561 B2	12-2003	Baba et al.	600/547
*	H	US-6,714,814 B2	03-2004	Yamada et al.	600/547
*	I	US-6,821,254 B2	11-2004	Weil et al.	600/484
	J	US-			
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FOREIGN PATENT DOCUMENTS

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